

**COURT'S ORDER WHETHER THE CASE IS OR IS NOT
APPROVED FOR REPORTING**

[Chapter VIII, Rule 32 (2) (b)]

Description of Case.

Writ Petition No. 1582 (M/S) of 2001

Smt. Geeta Adhikari

Versus

The Presiding Officer Court U.P. Haldwani and others.

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

(B.S. Verma, J.)

Date: 22-6-2006

Initials of Judge

Recovered Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (M/S) No. 1582 Of 2001
Old CMWP No. 28637 of 2000
(Under Art. 226 of the Constitution of India)

Smt. Geeta Adhikari, W/O Shri Ganga Singh Adhikari,
Shop No. 124, Bara Bazar, Mallital, District Nainital.

... **Petitioner.**

Versus

- 1.The Presiding Officer, Labour Court, U.P. Haldwani,
Nainital
2. U.P.Power Corporation Limited through the Sub
Divisional Officer, Electricity Distribution, Sub Division
City Nainital Pump House Mallital, Nainital.
3. Executive Engineer, Electricity Distribution Division, U.P.
Power Coporation Limited, Latsie Hall in front of Ramji
Hospital, Talli Tal, Nainital.

... **Respondents.**

Sri L.K. Verma, Advocate, learned counsel for the Petitioner.
Sri Nand Prasad, Learned Standing Counsel for the respondent no. 1.
Sri B.D. Upadhyay, learned counsel for the contesting respondents.

Date June 22, 2006.

(Hon'ble B.S. Verma, J.)

By means of this writ petition, the petitioner has sought a writ, order or direction in the nature of certiorari of this Court for calling for the record of the case and quashing the impugned award dated 30-8-1998 passed by the Labour Court Haldwani, which was published on the notice board on 11.10.1999 in Adjudication Case No. 8 of 1991 (Annexure No.1) in so far as it has denied the petitioner of her back wages for the period she was kept out of employment, i.e. w.e.f. 7.11.1989 till the date of award.

2. Brief facts giving rise to this writ petition are that the petitioner was appointed as hand receipt clerk by the respondent nos. 2 and 3 on 24.8.1987 and her work and conduct was

satisfactory. She worked continuously till 7.11.1989, when her services were terminated without any reason or prior notice. Aggrieved, the petitioner raised the industrial dispute, which was ultimately referred to by the Government under Section 4(K) of the U.P. Industrial Disputes Act in the following terms:-

“Whether the termination of services of lady workman Smt. Geeta Adhikari w/o Sri Ganga Singh Adhikari, hand receipt clerk by the employers from 7.11.89 is justified and/or legal? If no, to which benefit/relief the concerned workman is entitled and to what extent?”

3. Notice was issued to the employer as well as the workman lady. The lady worker filed her affidavit stating therein that she was employed on 24.8.1987 as hand receipt clerk by the employer and till the date of her termination she worked continuously and to the satisfaction of the employer. On 7.11.89, her services were terminated illegally without any prior notice. She requested for her reinstatement but to not avail. It was also asserted that she had worked for more than 240 days continuously preceding the date of termination of her service and that the termination against her was entirely illegal and unjustified.

4. In reply the employer filed its written statement alleging therein that the petitioner was neither given any appointment letter nor there is any question of issue of termination order against her. It was stated that no such post ever existed with the nomenclature “hand receipt clerk”. It was however stated that the lady workman was employed only on daily wages on account of shortage of staff and stand taken up by the petitioner is imaginary just to suit her claim. It was said that authority of appointment on the clerical post is vested with the Corporation. On these grounds the case was resisted from the side of the employers.

Before the respondent no.1, besides the written statement and rejoinder affidavit, oral evidence led by the parties was record. The learned Labour Court after hearing both the

parties and considering the entire material on record came to the conclusion that the termination of the lady workman/petitioner was illegal and improper. Accordingly, by the impugned order dated 30-8-1995, while passing order of reinstatement of the petitioner, it was ordered that the petitioner shall not be entitled to back wages for the period she was kept out of employment and from the date of decision, she shall be entitled to be treated in the employment as daily wage clerk and shall be entitled to appear in the departmental test for regular employment. Feeling aggrieved, the petitioner has come up in the writ petition.

4. It has been contended by the learned counsel for the petitioner that the finding of the learned Labour Court to the effect that the petitioner is not entitled to her back wages is illegal and without jurisdiction inasmuch as when the Labour Court directed reinstatement of the petitioner, she became entitled for full back wages, as has been held by the Apex Court in several cases. Learned counsel for the petitioner further contended that the respondent no.1 has given no justifiable reasons to deny the back wages to the petitioner particularly when the learned court below directed the reinstatement of the petitioner with continuity of service.

5. Notices were issued to the respondent and Sri B.D.Upadhyay, advocate, appeared on behalf of the respondent nos. 2 and 3. The respondents were given time to file Counter Affidavit on 12-11-2005 and 21-2-2006, but no counter affidavit was filed.

6. I have heard the learned counsel for the parties and carefully perused the entire material on record including the case-law relied upon by the learned counsel for the petitioner, which shall be referred to hereinafter at appropriate place.

7. Learned counsel for the respondent on the other hand vehemently argued that the present writ petition has been filed by the petitioner on 30-6-2000, while the impugned award was published on 11-10-1999 and in support of his argument, he has placed reliance upon the Apex Court judgment in the case of ***“M.P.State Electricity Board Vs. Jarina Bee (Smt) [(2003) 6 Supreme Court Cases, 141],*** wherein it was held that ***“Back wages- Payment of full wages, held is not the natural consequence of an order of dismissal being set aside.”*** In paragraph no. 9 it has been observed that ***“applying the legal principles, the inevitable conclusion is that the High Court committed an error in holding that the award of full back wages was the nature consequence.”*** Ultimately the Apex Court awarded Rs. 85,000/- towards back wages to the petitioner-employee in that said case.

8. The learned counsel for the petitioner has relied upon a three Judge Bench judgment of the Apex Court, besides some other case, in the case of ***“M/s Hindustan Tin Works Pvt. Ltd. V. The Employees of M/s Hindustan Works Pvt. Ltd. and others”*** [AIR, 1979 Supreme Court, Page 75], wherein it was held inter alia in paragraph 9 that the relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer.” It was further observed that ***“ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness.”*** In this case ultimately 75% back wages was awarded.

9. Learned counsel for the petitioner relied upon the judgment of this Court dated 09-11-2005 passed in ***Writ Petition No. 1754(M/S) of 2001 Bihari Nandan Bahuguna Vs. State of U.P. and others***, in which the learned Single Judge had relied upon the verdict of the Apex Court in the case of ***Hindustan Tin Works Pvt. Ltd.***” (*supra*) itself awarded 50% back wages for the period the workman was put to remain idle due to termination of his service. In that case also, the learned Labour Court had denied payment of back wages to the petitioner, who was reinstated in service.

10. It may be mentioned that in the case at hand, the workman had neither pleaded nor led any evidence that she remained out of earnings during the period she was kept out of service, which in my view, will be main factor to allow full back wages. I am fortified in my view by the Apex Court judgments, which are being referred to hereunder.

11. In the case of ***“U.P.SRTC LTD. Vs. Sarada Prasad Misra and another” [(2006) 4 Supreme Court Cases, Page 733]*** the matter regarding payment of full back wages was considered and it was observed by the Apex Court that ***“Labour Law- Back wages- Right to- Full back wages- When to be granted- Held, no precise formula can be adopted nor “cast-iron rule” can be laid down in this regard- Payment of back wages is a discretionary power which has to be exercised keeping in view the facts and circumstances of each case- The approach of the court/tribunal should not be rigid or mechanical but flexible and realistic- In case where the employee is entitled to reinstatement, the question regarding payment of back wages would be independent of the question as to entitlement to reinstatement- While considering and determining question regarding payment of back wages the court/tribunal would consider all relevant circumstances referred to herein and pass an appropriate order keeping in view the principles of justice, equity and good conscience- Termination of***

services of respondent- Respondent filing application challenging his termination before Conciliation Officer after about 7 years from the date of termination- Held, respondent not entitled to back wages from the year when his services terminated- He, however, entitled to 50% back wages from the date of the award till the date of reinstatement.”

12. In an earlier case *“Allahabad Jal Sansthan V. Daya Shankar Rai & Anr.” [(2005) 5 SCC 124]=JT, 2005(5) SC, Page 112]* it was held by the Apex Court that *“though earlier award of full back wages was the usual result of reinstatement, but with passage of time a need has arisen to develop a pragmatic approach. Respondent who was reinstated not having raised any plea or adduce any evidence that he remained unemployed throughout the period from date of termination to the date of reinstatement, interest of justice would be sub-served by awarding fifty per cent of back wages.”* It was further observed by the Apex Court that *“in view of the fact that the respondent had been reinstated in service and keeping in view the fact that he had not raised any plea or adduced any evidence to the effect that he remained unemployed throughout from the date of dismissal to the date of reinstatement (almost 14 years) the interest of justice would be subserved if the respondent is directed to be paid 50% of the back wages.”* In the case at hand, no such plea was taken by the petitioner to the effect that she remained unemployed throughout the period from the date of her termination from service till the date of reinstatement and no evidence has come forth on this score. Therefore, the ratio of the verdict of the Apex Court can be fully applied to the present case.

13. In the case of *Vikramaditya Pandey V. Industrial Tribunal, Lucknow, [(2001) 2 S.C.C. page 423]* the appellant was directed to be reinstated in service with back wages to the tune of 50%.

14. In view of the reasons and discussion aforesaid coupled with the cumulative effect of the verdict of the Apex Court referred to above, I am of the view that it is a fit case in which the petitioner ought to have been awarded 50% back wages for the period she was kept out of employment, i.e. from the date of termination of her services till the date of reinstatement.

15. Accordingly, the writ petition is partly allowed. The impugned order stands modified to the above extent. The petitioner shall be entitled to get 50% from 7.11.1989 till the date of award. Costs easy.

(B.S. Verma, J.)

RCP